Union of India

Vs

The Metal Corporation of India Ltd. & Anr.

Civil Appeal No. 1222 of 1966

(CJI K. Subha Rao, J. M. Shelat JJ)

05.09.1966

JUDGMENT

SUBBA RAO, C.J.

This appeal by certificate raises the question of the constitutional validity of the Metal Corporation of India (Acquisition of Undertaking) Act (No. XLIV of 1965), hereinafter called the Act.

The relevant facts lie in a small compass. The 1st respondent, The Metal Corporation of India Limited, hereinafter called the Corporation, was a limited company constituted under the Indian Companies Act, having for its objects, inter alia, the development of zinc and lead mines at Zawar in the State of Rajasthan and the construction of a zinc smelter and other connected works for producing electrolytic zinc and by-products. The Government was satisfied that it was necessary to acquire the said Corporation in public interest and on October 22, 1965, the President of India promulgated an Ordinance (No. 6 of 1965) providing for the acquisition of the Corporation by the Central Government. Pursuant to the said Ordinance, on or about October 23, 1965, the Central Government took over the possession, control and administration of the said Corporation. The Corporation, the 1st respondent and its Managing Director, the 2nd respondent filed a Writ Petition under Art. 226 of the Constitution in the High Court of Judicature for the State of Punjab, Circuit Bench at New Delhi, being Petition No. 631-D of 1965, challenging the validity of the said Ordinance. In the meantime, the Parliament passed the Act on the same terms as contained in Ordinance No. 6 of 1965 : it received the assent of the President of India on December 12, 1965. The respondent filed another writ petition in the said High Court, being Writ Petition No. 832-D of 1965, for a declaration that the Act was ultra vires the Constitution. The said High Court held that the Ordinance and the Act contravened the relevant provisions of Art. 31 of the Constitution and, therefore, were constitutionally void. The present appeal is preferred against the said judgment of the High Court.

It will be convenient at this stage to read the relevant provisions of the Act. The preamble and the relevant provisions of the Act read :

"Preamble.

An Act to provide for the acquisition of the undertaking of the Metal Corporation of India Limited for the purpose of enabling the Central Government in the public interest to exploit, to the fullest extent possible, zinc and lead deposits in and around the Zawar area in the State of Rajasthan and to utilise those minerals in such manner as to subserve the common good.

Section 3. On the commencement of this Act, the undertaking of the company shall, by virtue of this Act, be transferred to, and vest in, the Central Government.

Section 10. (1) The Central Government shall pay compensation to the company for the acquisition of the undertaking of the company and such compensation shall be determined in accordance with the principles specified in the Schedule and in the manner hereinafter set out, that is to say, -

#.. .. ..##

(2) Notwithstanding that separate valuations are calculated under the principles specified in the Schedule in respect of the several matters referred to therein, the amount of compensation to be given shall be deemed to be a single compensation to be given for the undertaking as a whole.

#(3) .. .. .. THE SCHEDULE##

Principles for determining compensation for acquisition of the undertaking

Paragraph I. - The compensation to be paid by the Central Government to the company in respect of the acquisition of the undertaking thereof shall be an amount equal to the sum total of the value of the properties and assets of the company on the date of commencement of this Act calculated in accordance with the provisions of paragraph II less the sum total of the liabilities and obligations of the company as on the said date calculated in accordance with the provisions of paragraph III.

Paragraph II. - (a) The market value of any land or buildings;

(b) the actual cost incurred by the company in acquiring any plant, machinery or other equipment which has not been worked or used and is in good condition and the written-down value (determined in accordance with the provisions of the Income-tax Act, 1961 (XLIII of 1961), of any other plant, machinery or equipment;

(c) the market value of any shares, securities or other investments held by the company;

(d) the total amount of the premiums paid by the company in respect of all leasehold properties reduced in the case of each such premium by an amount which bears to such premium the same proportion as the expired term of the lease in respect of which such premium shall have been paid bears to the total term of the lease;

(e) the amount of debts due to the company, whether secured or unsecured, to the extent to which they are reasonably considered to be recoverable.

(f) the amount of cash held by the company, whether in deposit with a bank or otherwise;

(g) the value of all tangible assets and properties other than those falling within any of the preceding clauses.

> Paragraph III. - The total amount of liabilities and obligations incurred by the company in connection with the formation, management and administration of the undertaking and subsisting immediately before the commencement of this Act."

The gist of the said provisions may be given thus. The Act was made to acquire in public interest the undertaking of the Corporation. On the commencement of the Act, the undertaking was transferred and vested in the Central Government. Under s. 10 of the Act, the Government shall pay compensation to the undertaking as a whole; but, in the absence of an agreement between the Government and the Corporation, the compensation payable to the Corporation has to be ascertained under the principles specified in the Schedule in respect of the several matters referred to therein. Paragraph I of the Schedule lays down the manner in which the compensation to be paid to the Corporation for the acquisition of the undertaking is to be ascertained. The said compensation shall be an amount equal to the sum total of the value of the properties and assets of the Corporation on the date of the commencement of the Act calculated in accordance with the provisions of paragraph II less the liabilities on the said date calculated in accordance with the provisions of paragraph III of the Schedule. Broadly, the said paragraph lays down the principles for ascertaining the value of lands, buildings, machinery and equipment, amounts due to the undertaking and other tangible assets and properties. The different clauses of the paragraph adopt different principles for valuation. But what is important for the present purpose is the principle embodied in cl. (b) of para II. It is in two parts : the first provides for the valuation of plant, machinery or other equipment which has not been worked or used and is in good condition, and the second provides for the valuation of any other plant, machinery or equipment. The former has to be valued at the actual cost incurred by the Corporation in acquiring the same and the latter at the written-down value determined in accordance with the provisions of the Indian Income-tax Act, 1961.

The High Court held, on a construction of the said provisions, that the principle contained in cl. (b) of paragraph II of the Schedule to the Act in respect of machinery, etc. "cannot be called relevant to the determination of 'just equivalent', as it takes no notice of the notorious fact that prices have been steadily rising during the past several years, particularly of imported machinery and plant". It also held, "that depreciation rule does not even pretend to determine the actual depreciation in a particular case and it is obvious that such depreciation has no real relationship with the actual value of any machinery at any particular point of time". On that reasoning, it came to the conclusion, having regard to the decision of this Court in Vajravelu v. Special Deputy Collector ([1965] 1 S.C.R. 614.) that the said provision in respect of machinery did not lay down a principle for fixing compensation, i.e., a just equivalent to the machinery acquired.

The reasoning of the High Court was attacked by the learned Additional Solicitor-General on the ground that it did not appreciate the true scope of the said decision of this court and that, in any view, it went wrong in applying the principle of the said decision to the provisions of the Act. He contended that the Act laid down the broad principle that compensation shall be paid for the entire undertaking as a unit, but provided different modes for the ascertainment of the value of different parts thereof in such a way that the deficiency in the valuation of one part was offset by the liberal valuation of the other part. In that view, he contended, the Act embodied a principle relevant to the ascertainment of compensation for the undertaking acquired and, therefore, the product worked out under the said principle pertained only to the realm of adequacy which was beyond the ken of judicial review. He added that compensation in Art. 31 of the Constitution meant that compensation which was regarded as just in the context of public acquisitions and that that test was satisfied in the present case.

Mr. M. C. Setalvad, learned counsel for the respondents, contended that though under the Act compensation was to be given to the undertaking as one unit, the Act laid down principles for arriving at the valuation of the parts of arrive at the valuation of the whole and that, therefore, every such principle should stand the test laid down by this Court. So judged, the argument proceeded, both the principles laid down in cl. (b) of para II of the Schedule had no nexus to the ascertainment of compensation for the machinery acquired, for in the case of unused machinery, its cost price was the guide and in the case of used machinery its written-down value was the criterion and that both the methods were arbitrary.

We find it difficult to appreciate the arguments of the learned Solicitor-General. It is true that under s. 10 of the Act the Central Government shall pay compensation for the acquisition of the undertaking to the Corporation and the said compensation arrived at in the manner prescribed in the Schedule to the Act shall be deemed to be a single compensation to be given to the undertaking as a whole. But it will be noticed that though a single compensation for the undertaking is given, the said compensation shall be determined in accordance with the principles specified in the Schedule. Under the Schedule, the compensation for the entire undertaking shall be the amount equal to the sum total of the value of the properties and assets of the Corporation calculated in accordance with the provisions of para II of the Schedule. Under the said para II, different principles are laid down for ascertaining the value of different parts of the undertaking. If all the said principles laid down in para II of the Schedule do not provide for the just equivalent of all the parts of the undertaking mentioned therein, the sum total also cannot obviously be a just equivalent of the undertaking. So too, if some of them do not provide for a just equivalent and others do so, the sum total cannot equally be a just equivalent to the undertaking. In the case of the undertaking in question, the machinery is the most valuable part of the undertaking. Apropos the unused machinery in good condition, how can the price for which the said machinery was purchased years ago possibly represent its price at the time of its acquisition ? A simple illustration will disclose the irrelevance of the principle. Suppose in 1950 a machinery was purchased for Rs. 100 and, for some reasons, the same has not been used in the working of the undertaking but has been maintained in good condition. That machinery has not become obsolescent and still can be used effectively. If purchased in open market it will cost the owner Rs. 1,000. A compensation of Rs. 100 for that machinery cannot be said to be a just equivalent of it. It is common knowledge that there has been an upward spiral in prices of the machinery in recent years. The cost price of a machinery purchased about ten years ago is a consideration not relevant for fixing compensation for its acquisition in 1965. The principle must be such as to enable the ascertainment of its price at or about the time of its acquisition. Nor the doctrine of written-down value accepted in the Income-tax law can afford any guide for ascertaining the compensation for the used machinery acquired under the Act. Under the general scheme of the Income-tax Act, the income is to be charged regardless of the diminution in the value of the capital. But the rigour of this hard principle is mitigated by the Act granting allowances in respect of depreciation in the value of certain assets such as machinery, buildings, plant, furniture, etc. These allowances are worked out on a notional basis for giving relief to the income-tax assessee. This artificial rule of depreciation evolved for income-tax purposes has no relation to the value of the said assets. To illustrate : a machinery was purchased in the year 1950 for Rs. 1,000. The aggregate of all the depreciation allowances made year after year for ten years may exhaust the sum of Rs. 1,000 with the result, after the tenth year, the assessee will not be entitled to any depreciation. From this it cannot be said that after the tenth year the machinery has no value. Indeed, a machinery purchased for Rs. 1,000 in 1950, because of subsequent rise in prices may be sold in 1965 for Rs. 10,000. But the application of the principle laid down in cl. (b) of para II of the Schedule to the Act in regard to used machinery gives the owner no compensation at all. Yet, the

Government takes the machinery worth Rs. 10,000 gratis. This illustration exposes the extreme arbitrariness of the principle. It is, therefore, manifest that the two principles of valuation embodied in cl. (b) of para II of the Schedule to the Act are not relevant to the fixing of compensation for the machinery at the time of its acquisition under the Act. The argument of the learned Additional Solicitor-General that the working out of all the principles in respect of different parts of the undertaking would result in a product which would fairly represent, in the context of public acquisitions, the "just equivalent" to the undertaking acquired is purely based on a surmise for, it is not shown that the working out of any one or more of the principles would give a higher compensation to some parts of the undertaking so that the excess paid under one head would offset the deficiency under another head. Nor can the doctrine of inherent worth of a machinery has any relevance in the matter of giving compensation for its acquisition at a particular point of time, for the simple reason that the worth of an article depends upon the market conditions obtaining at the time of its acquisition. It is impossible to predicate, irrespective of such conditions, that a particular machinery has a fixed value for all times.

Four decisions of this Court laid down the principles applicable to the present case. Indeed, but for the said decisions, we would have posted this case before a Constitution Bench of five Judges. But, as this appeal involves only the application of the construction put upon Art. 31 of the Constitution by this Court in the said decisions, we did not resort to that course. The first of them is The State of West Bengal v. Mrs. Bela Banerjee ([1954] S.C.R. 558, 564.). There, the validity of the West Bengal Land Development and Planning Act, 1948 was under scrutiny. Section 8 thereof provided that compensation to be awarded for compulsory acquisition to owners of land was not to exceed the market value as on December 31, 1946. This Court held that the said Act was ultra vires the Constitution and void under Art. 32(2) thereof. In that context, Patanjali Sastri C.J., observed :

> "Turning now to the provisions relating to compensation under the impugned Act, it will be seen that the latter part of the proviso to section 8 limits the amount of compensation so as not to exceed the market value of the land on December 31, 1946, no matter when the land is acquired. Considering that the impugned Act is a permanent enactment and lands may be acquired under it many years after it came into force, the fixing of the market value on December 31, 1946, as the ceiling on compensation, without reference to the value of the land at the time of the acquisition is arbitrary and cannot be regarded as due compliance in letter and spirit with the requirement of article 31(2)."

The above decision was followed by this Court in State of Madras v. D. Namasivaya Mudaliar ([1964] 6 S.C.R. 936, 945.). There the respondents were owners of certain lands which were to be compulsorily acquired under Madras Lignite (Acquisition of Land) Act, 1953. The Act came into force on August 20, 1953, before Art. 31 of the Constitution was amended by the Constitution (Fourth Amendment) Act, 1955. By the said Act compensation for the acquisition of lignite-bearing lands under the Land Acquisition Act was to be assessed on the market value of the land prevailing on August 28, 1947, and not on the date on which the notification was issued under s. 4(1) of the Land Acquisition Act. It also provided that in awarding compensation, the value of non-agricultural improvements commenced since April 28, 1947 would not be taken into consideration. This Court held that the said Act was bad, because it contravened Art. 31(2) of the Constitution, as it stood before the Constitution (Fourth Amendment) Act, 1955. This Court, speaking through Shah J., observed :

> "Assuming that in appropriate cases, fixation of a date anterior to the publication of

> the notification under s. 4(1) for ascertainment of market value of the land to be acquired, may not always be regarded as a violation of the constitutional guarantee, in the absence of evidence that compensation assessed on the basis of market value on such anterior date, awards to the expropriated owner a just monetary value of his property at the date on which his interest is extinguished, the provisions of the Act arbitrarily fixing compensation based on the market value at a date many years before the notification under s. 4(1) was issued, cannot be regarded as valid."

Then the learned Judge proceeded to state :

> "To deny to the owner of the land compensation at rates which justly indemnify him for his loss by awarding him compensation at rates prevailing ten years before the date on which the notification under s. 4(1) was issued amounts in the circumstances to a flagrant infringement of the fundamental right of the owner of the land under Art. 31(2) as it stood when the Act was enacted."

These two decisions turned upon the construction of Art. 31(2) of the Constitution before the Constitution (Fourth Amendment) Act, 1955. These cases laid down two propositions : (1) "Compensation" under Art. 31(2) of the Constitution means a "just equivalent" of what the owner has been deprived of; and (2) the value of land at an anterior date is presumed to be no compensation within the meaning of the said Article. After the Constitution (Fourth Amendment) Act, 1955, this Court had to construe in two decisions the amended provision of Art. 31(2) vis-a-vis the expression "compensation" found therein. The first decision is that in Vajravelu v. Special Deputy Collector ([1965] 1 S.C.R. 614.). There, this Court observed at p. 625-626 :

> "A scrutiny of the amended Article discloses that it accepted the meaning of the expressions "compensation" and "principles" as defined by this Court in Mrs. Bela Banerjee's case ([1954] S.C.R. 558.)."

And it held that, if the compensation is illusory or if the principles prescribed are irrelevant to the value of the property at or about the time of its acquisition, it can be said that the Legislature committed a fraud on power and, therefore, the law is bad. One of the illustrations given at p. 627 is relevant to the present enquiry and that is as follows :

> ".....if a law lays down principles which are not relevant to the property acquired or to the value of the property at or about the time it is acquired, it may be said that they are not principles contemplated by Art. 31(2) of the Constitution. If a law says... that though it (house) is acquired in 1960 its value in 1930 should be given... the principles do not pertain to the domain of adequacy but are principles unconnected to the value of the property acquired."

Applying these principles, this Court in Jeejeebhoy v. Assistant Collector ([1965] 1 S.C.R. 636.), held that the fixation of an anterior date for the ascertainment of the value of the property acquired without reference to any relevant considerations which necessitated the fixing of an earlier date for the purpose of ascertaining the real value is arbitrary. On that ground this Court held that the Land Acquisition (Bombay Amendment) Act, 1948, did not provide for payment of just equivalent of what the owner was deprived of, as it provided for the ascertainment of compensation on the basis of the value of lands acquired as on January 1, 1948 and not as on the date on which the s. 4 notification under the 1894 Act was issued.

The relevant aspect of the legal position evolved by the said decisions may be stated thus : Under Art. 31(2) of the Constitution, no property shall be compulsorily acquired except under a law which provides for compensation for the property acquired and either fixes the amount of compensation or specifies the principles on which and the manner in which compensation is to be determined and given. The second limb of the provision says that no such law shall be called in question in any court on the ground that the compensation provided by the law is not adequate. If the two concepts, namely, "compensation" and the jurisdiction of the court are kept apart, the meaning of the provisions is clear. The law to justify itself has to provide for the payment of a "just equivalent" to the land acquired or lay down principles which will lead to that result. If the principles laid down are relevant to the fixation of compensation and are not arbitrary, the adequacy of the resultant product cannot be questioned in a court of law. The validity of the principles, judged by the above tests, falls within judicial scrutiny, and if they stand the tests, the adequacy of the product falls outside its jurisdiction. Judged by the said tests, it is manifest that the two principles laid down in cl. (b) of para II of the Schedule to the Act, namely, (i) compensation equated to the cost price in the case of unused machinery in good condition, and (ii) written-down value as understood in the Income-tax law as the value of used machinery, are irrelevant to the fixation of the value of the said machinery as on the date of acquisition. It follows that the impugned Act has not provided for "compensation" within the meaning of Art. 31(2) of the Constitution and, therefore, it is void.

The mere fact that in regard to some parts of the undertaking the principles provide for compensation does not affect the real question, for, machinery is the major part of the undertaking and, as the entire undertaking is acquired as a unit, the constitutional invalidity of cl. (b) of para II of the Schedule to the Act affects the totality of the compensation payable to the entire undertaking. In the context of compensation for the entire undertaking, the clauses of para II of the Schedule to the Act are not severable. In the result, the Act, not having provided for compensation, is unconstitutional and the conclusion arrived at by the High Court is correct.

The appeal fails and is dismissed with costs.

V.P.S.

Appeal dismissed.

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